

## GENDER RECOGNITION ACT REFORM: SCOTTISH GOVERNMENT HANDLING

### Summary

- The Scottish Government has used the five years it has spent developing the Bill very badly.
- MSPs are being left to make up for a sub-standard government process.
- Responsibility now rests with the Parliament to compensate for the poor process to date and do whatever it can to avoid enacting bad law, with unintended consequences.

### SNP manifesto commitment

The 2021 SNP manifesto stated:

*'In the next parliament we will work with trans people, women, equality groups, legal and human rights experts to identify the best and most effective way to improve and simplify the process by which a trans person can obtain legal recognition – so that the trauma associated with that process is reduced. We remain committed to making necessary changes to the Gender Recognition Act that arise from this work at the earliest opportunity.'* (emphasis added)

This is not what has happened.

### “Two consultations”

The Scottish Government's line to take, repeated by supporters of the Bill, is that two consultations have taken place and the Bill is one of the “most consulted on” ever. This line suggests that all criticism of the Bill must have been considered and addressed.

This is simply untrue. The Scottish Government invited comments twice and then ignored any that raised concerns. This is not consultation.

The government has not published a response to either consultation or addressed the specific concerns raised.

The Policy Memorandum deals briefly and dismissively with any points from the consultations.

The government took no initiative to engage with any groups with concerns or questions until it was shamed into offering meetings by critical press coverage, early in January 2022. The offer was made only through the media.

Short meetings, mostly around half an hour, held with Ministers and officials between January and March [exposed huge gaps](#) remaining in the Scottish Government's understanding. The Scottish Government was unable to engage with critical comments and questions, did not understand the arguments being made, made errors of fact, and had given no thought to the points made.

These meetings happened too late to influence policy making. An FoI response shows Bill papers were passed to the Presiding Officer on 2 February. Internal government approval needs mean all major decisions will have been finalised several weeks before that.

The very large number of individual consultation responses remain unavailable and there is no plan to publish any of them. Women and Girls in Scotland is pursuing a formal complaint after receiving reassurances that it would be possible to access the latest set.

## **Nothing has changed as a result of consultation**

The Bill as introduced has only changed in minor ways from the version consulted on in 2019. This followed closely the proposals in the 2017 consultation paper.

The draft Equality Impact Assessment (EQIA) included in the 2019 consultation considered possible effects on single sex provision. It was heavily criticised in detail by respondents, as described in the analysis of consultation responses. Despite this, the EQIA published for the Bill [is almost word for word the same as before](#).

## **Meetings with other groups**

Between May and December 2021, the Scottish Government met groups that advocate for self-declaration for a Gender Recognition Certificate on seven occasions. There are no minutes for the three meetings which were with officials only.

The Children's Commissioner's [response](#) to the second consultation raised serious concerns about the proposal to reduce the age, and a lack of supporting research or evidence. The government met the Commissioner on 24 September 2021. It holds no record of what was discussed at the meeting. His concerns are not mentioned in the Policy Memorandum.

There are also no minutes of the meeting between officials and the Equalities and Human Rights Commission on 23 July 2021. The [EHRC's letter](#) setting out its view that the Scottish Government still needs to do more work was written after the Commission had met the Cabinet Secretary in January.

## **An imbalance in resources and ability to organise**

The main groups advocating for GRA reform on the SG's model are all heavily funded by the SG.

Groups concerned about the Bill rely largely on volunteer time, with limited resources raised through crowd funding, with average donations typically of around £30. They are subject constantly to false accusations of receiving external funding from sources designed to discredit them, including from within the Government (see below).

Women attending a meeting held at the time of the first consultation in February 2018 were confronted by aggressive noisy protestors. Victims of sexual abuse told their stories while protestors banged saucepans and yelled at the windows outside.

Threats to the venue hosting a meeting in Edinburgh on this subject in January 2019 led to the organisers being required to pay for increased security.

A meeting on women's rights at the University of Edinburgh in June 2019 required speakers to attend an hour long security briefing. A person was charged with threatening and abusive behaviour towards one of speakers as she left the event and [later accepted a direct measure from the Procurator Fiscal](#). This prompted a parliamentary motion condemning "violence or threats of violence towards women engaging in public life in Scotland" signed by 73 MSPs from all parties.

No meeting in Scotland held by advocates of this reform has been targeted for protests.

Those MSPs in the last Parliament who expressed doubt about policies based on self-declaration were subject to abuse. Andy Wightman MSP was required by the Scottish Green Party to apologise formally for attending the meeting at the University of Edinburgh.

### **Recent government comments**

On 10 April the Minister for Green Skills, Circular Economy and Biodiversity, [told](#) The Herald, “My understanding is that there’s money in this from certain right-wing American groups that’s been flooding into organisations in the UK”.

She stated further, the BBC “only recently stopped putting on climate deniers because they required balance. We wouldn’t put balance on the question of racism or anti-Semitism, but we allow this fictional notion of balance when it comes to anti-trans [views]. The whole thing is disgusting.”

In response to complaints, the Government [said](#) “the First Minister is of the view that Ms Slater’s comments are entirely consistent with Government policy”.

An [Fol response](#) showed that the Scottish Government holds no evidence that groups critical of its policies here receive funding from the right-wing groups alleged by the Minister.

### **Conclusion**

The task facing MSPs due to the poor policy process behind this Bill is unreasonably difficult and large. The atmosphere has been made worse by the government’s inaction and its own use of language.

We hold the Scottish Government responsible for the atmosphere here. Claims it makes to have sought to build consensus here are patently untrue.

Critics of proposals in the Bill are often made to feel as though they are under more scrutiny for seeking to have a voice, than the government and its supporters are for their proposals to change the law.

But the Scottish Government’s policy processes have been inadequate. We do not believe it understands what it is doing. The First Minister [has asserted](#) that criticisms are “not valid” and reform “does not change in any way, shape or form any legal protections that women have” without explaining why.

As a result, as currently drafted the Bill carries a high risk of becoming another piece of bad law, with unintended consequences which will be most damaging to women and to young people at their most vulnerable.

The Scottish Government’s proposals and handling of this issue are therefore what should now be the focus in the Parliament. Those flagging up problems should be listened to, and not subject to further attacks on their motives or misrepresentation of their arguments.

The GRR Bill will put the effectiveness of the Parliament’s processes in the spotlight. We hope MSPs from all parties will now engage seriously with this legislation in a way that has not yet been done.

*27 May 2022*